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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,425	11/20/2003	Steven Ryals	BE1-0031US	9644

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EXAMINER

SHARP, JEFFREY ANDREW

ART UNIT PAPER NUMBER

3677

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/718,425	Applicant(s) RYALS ET AL.	
	Examiner Jeffrey Sharp	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18-22 is/are rejected.
- 7) ☒ Claim(s) 16 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

- [1] Claims 1-22 are pending.

Claim Objections

- [2] Claim 19 is objected to because of the following informalities:

The word "in" on line one should be --is--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

- [3] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

- [4] Claims 1-4, 8, and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by

Larsen US-5,314,160.

Larsen substantially teaches an apparatus comprising at least three apertures (18,46,20,38) on a molded body, wherein at least one (only one) aperture (38) is positioned opposite of at least two (18,46,20) apertures on opposing sides of a passage (23) adapted to secure and retain a wire therebeneath. At least one fastener (22) is integrated within the molded body and extends outward therefrom. At least one of the apertures are sized to accommodate the at least one fastener (22), and the molded body is shown to have inherent "grips" at the edges of the molded body¹.

As for claim 21, the retaining means (e.g., "molded body") has identifying means (28) for identifying the apparatus. See also, Albertson et al. US-6,095,739, Campbell et al. US-2002/0187019 A1, Kobyllinski et al. US-2004/0126201 A1, Duval US-2003/0057697, and LoGiudice US-2004/0165968 A1, which are only several examples of the prior art that suggest using indicia for identification purposes.

[5] Claims 1, 3, 4, 5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Mangone Jr. US-4,801,064.

Mangone Jr. substantially teaches an apparatus comprising at least three apertures (12,14, Figures 8-10) on a molded body (10), wherein at least one aperture (12) is positioned opposite of at least two (14, Figures 8-10) apertures on opposing sides of a passage (16,42) adapted to secure and retain a wire therebeneath. At least one fastener (20,26,28) is integrated within the molded body (10) and extends outward therefrom. At least one of the apertures are sized to

¹ Larsen US-5,314,160 Figures 6 and 7.

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accommodate the at least one fastener (20,26,28), and the molded body (10) has inherent "grips" at the edges of the molded body, as any object can be "gripped".

As for Claim 5, see col. 5 line 34.

[6] Claims 1, 3, 4, 5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Golden et al. US-4,573,469.

Golden et al. substantially teach an apparatus comprising at least three apertures (76,80) on a molded body (62), wherein at least one aperture (76) is positioned opposite of at least two (76,80) apertures on opposing sides of a passage (72) adapted to secure and retain a wire therebeneath. At least one fastener (60,66) is integrated within the molded body (62) and extends outward therefrom. At least one of the apertures are sized to accommodate the at least one fastener (66), and the molded body (62) has inherent "grips" at the edges of the molded body, as any object can be "gripped".

[7] Claims 1, 3, 4, 5, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Vogel US-647,169.

Vogel substantially teach an apparatus comprising at least three apertures (h) on a molded body (P), wherein at least one aperture (h) is positioned opposite of at least two apertures on opposing sides of a passage (center P) adapted to secure and retain a wire therebeneath. At least one fastener (H) is integrated within the molded body (P) and extends outward therefrom. At least one of the apertures are sized to accommodate the at least one fastener (H), and the molded body (P) has inherent "grips" at the edges of the molded body, as any object can be "gripped".

[8] Claims 1-6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Mandel et al. US-389,660.

Mandel et al. substantially teach an apparatus comprising at least three apertures (4,5) on a molded body (3), wherein at least one aperture (4) is positioned opposite of at least two apertures (4,5) on opposing sides of a passage (center 3) "adapted to" secure and retain a wire therebeneath. At least one fastener (1,2) is integrated within the molded body (3) and extends outward therefrom. At least one of the apertures are sized to accommodate the at least one fastener (1,2), and the molded body (3) has inherent "grips" at the edges of the molded body, as any object can be "gripped".

[9] Claims 1-4, 6, and 8-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Walper US-1,913,864.

Walper substantially teaches an apparatus comprising at least three apertures (17) on a molded body (16,19), wherein at least one aperture is positioned opposite of at least two apertures² on opposing sides of a passage "adapted to" secure and retain a wire therebeneath. At least one fastener (20) is integrated within the molded body and extends outward therefrom. At least one of the apertures are sized to accommodate the at least one fastener (20), and the molded body has inherent "grips" at the edges of the molded body, as any object can be "gripped".

As for claim 12, the fasteners (20) are integral with the molded body (19) and have heads that extend outward (i.e., "protrude").

² Walper US-1,913,864, Figures 4 and 6.

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As for claim 15, the holes (17) can be used as indicia.

Claim Rejections - 35 USC § 103

[10] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[11] Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Mandel et al. US-389,660, Vogel US-647,169, Golden et al. US-4,573,469, Mangone Jr. US-4,801,064, and Larsen US-5,314,160 in view of Curry US-5,620,289.

Mandel et al., Vogel, Golden et al., Mangone Jr., and Larsen substantially teach all of the limitations of the instant claim 1.

However, the abovementioned references fail to disclose expressly identifying indicia, in particular to identify size.

Curry suggests colored staples as indicia for size. See also, Albertson et al. US-6,095,739, Campbell et al. US-2002/0187019 A1, Kobyllinski et al. US-2004/0126201 A1, Duval US-2003/0057697, and LoGiudice US-2004/0165968 A1, which are only several examples of the prior art that suggest using indicia for identification purposes.

At the time of invention, it would have been obvious to one of ordinary skill in the art, to modify the apparatus taught by any of Mandel et al., Vogel, Golden et al., Mangone Jr., and Larsen, to comprise size or other indicia as suggested by Curry and others, in order to: 1)

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positively identify the correct fastener size, 2) blend in with surrounding colors as a means for camouflage, 3) provide a means for the apparatus to visually "stick out" for easy location, 4) ensure the correct fastener with the correct molded body, 5) identify the wire gauge being held, or any of a myriad of other possible reasons to provide indicia.

Allowable Subject Matter

[12] Claims 9-17 would be allowable over the prior art of record if the word "corresponding" is replaced with substantially axially parallel on lines 10 and 11 of claim 9³.

It is known to provide lightening holes to reduce weight and material costs, and it is further known to provide holes to weaken structures thus facilitating easy material deflection and flow. However, the prior art of record does not fairly suggest any obvious reason or motivation to provide "at least three apertures *through* the interconnecting portion [of an apparatus for protecting and retaining wire, e.g., insulated staple] *coaxially parallel and aligned* with the apertures of the first and second foot portions," other than for those advantages disclosed by Applicant.

Mandel US-389,660 provides an aperture (5) on the interconnecting portion in order to provide space for staple legs (2). The aperture (5) could easily be reinforced by providing extending webs that would inherently create three apertures, but this is not warranted by prior art teachings within the field of endeavor (e.g., "staples", "insulative staples", "multipart staples").

Walper US-1,913,864 suggests an interconnecting portion (16) having a plurality of aligned apertures (17) sized for fastener elements (20) to be selectively inserted therealong,

³ To precisely define over the side apertures of Walper US-1,913,864, Figure 6.

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which could be used as indicia for determining the number of planks in a stack. However, Walper does expressly disclose or provide any motivation to have the apertures on the first and second foot portions (14) substantially axially parallel and aligned with those (17) of the interconnecting portion.

[13] Claims 16 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

[14] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is as follows:

US 20050055961 A1	US-PGPUB	Albertson, Stephen H. et al.
US 6095739 A	USPAT	Albertson; Stephen H. et al.
US 3085129 A	USPAT	ANDERSON JOHN M
US 3176945 A	USPAT	ANDERSON JOHN M
US 3241797 A	USPAT	ANDERSON JOHN M
US 2418539 A	USPAT	ANDERSON JOHN M
US 4697045 A	USPAT	Beatty; Marguerite R.
US 4627437 A	USPAT	Bedi; James J. et al.
US 5393184 A	USPAT	Beeuwkes, III; Reinier
US 6305891 B1	USPAT	Burlingame; Mark S.
US 20020187019 A1	US-PGPUB	Campbell, Ronald G. et al.
US 3894174 A	USPAT	Cartun; Walter P.
US 6634537 B2	USPAT	Chen; Tung-I
US 3787608 A	USPAT	Colby; Harold S. et al.
US 5718548 A	USPAT	Cotellessa; Sergio
US 4548202 A	USPAT	Duncan; Robert B.
US 20030057697 A1	US-PGPUB	Duval, Landon
US 6671185 B2	USPAT	Duval; Landon
US 4040149 A	USPAT	Einhorn; Ruediger
US 1529881 A	USPAT	ENGLE RAY S

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US 4805824 A	USPAT	Erickson; Gary W.
US 4693248 A	USPAT	Failla; Stephen J.
US 4533102 A	USPAT	Ferrell; David R.
US 2684776 A	USPAT	FLORENCE ROSENSTEIN
US 6835027 B1	USPAT	Glass; Billy
US 4960420 A	USPAT	Goble; E. Marlowe et al.
US 4534350 A	USPAT	Golden; Donald M. et al.
US 2154306 A	USPAT	GOODSTEIN CHARLES B
US 4994073 A	USPAT	Green; David T.
US 3492907 A	USPAT	HAUCK JULIUS J
US 6113332 A	USPAT	Hill; Delmar J.
US 5827032 A	USPAT	Howard; James R.
US 3341651 A	USPAT	JOHN ODEGAARD
US 6817895 B2	USPAT	Kiely; Kenneth M.
US 5441373 A	USPAT	Kish; Frederick A. et al.
US 20040126201 A1	US-PGPUB	Kobylinski, Brian et al.
US 4691598 A	USPAT	Lin; Min-Shin
US 20040165968 A1	US-PGPUB	LoGiudice, John
US 4801061 A	USPAT	Mangone, Jr.; Peter G.
US 5350267 A	USPAT	Mangone, Jr.; Peter G.
US 4532927 A	USPAT	Miksza, Jr.; Anthony
US 5250058 A	USPAT	Miller; Michael B. et al.
US 0662587 A	USPAT	Blake
US 1252541 A	USPAT	Bohlinger
US 1224615 A	USPAT	Doyle
US 0977615 A	USPAT	Goss
US 0770479 A	USPAT	Shuster
US 0648071 A	USPAT	Griffith et al.
US 0463830 A	USPAT	Gibson
US 0426893 A	USPAT	Wildemore
US 0420635 A	USPAT	Stieringer
US 0278263 A	USPAT	Orr Jr.
US 0249850 A	USPAT	McGill
US 5546637 A	USPAT	Niedecker; Herbert
US 1913864 A	USPAT	ORA WALPER CURRY
US 3853606 A	USPAT	Parkinson; Robert E.
US 2526902 A	USPAT	RUBLEE NORMAN C
US 4582288 A	USPAT	Ruehl; William E.
US 6695558 B2	USPAT	Shibata; Harutoshi
US 5934852 A	USPAT	Stingl; David A.
US D402540 S	USPAT	Stridh; Lars
US 4127250 A	USPAT	Swick; Edwin G.
US 5223675 A	USPAT	Taft; Anthony W.
US 1705144 A	USPAT	TOBEY CHARLES W

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US 4129059 A	USPAT	Van Eck; William F.
US 5189766 A	USPAT	Weber; William F.
US 5735444 A	USPAT	Wingert; Rudolf
NPL Southwire Company: News Release...		
NPL EC&M: 2002 Product of the Year...		
NPL Acme Staple Company...		

[15] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Sharp whose telephone number is (571) 272-7074. The examiner can normally be reached 7:00 am - 5:30 pm Mon-Thurs.

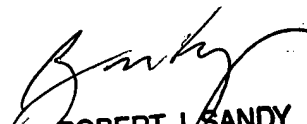
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JAS



4/27/05



ROBERT J. SANDY
PRIMARY EXAMINER